

August 7, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**ORDER OF DISMISSAL**

SUBJECT: Department of Development and Environmental Services File No. **E0900452**

**JUNE MARTIN**  
Code Enforcement Appeal

Location: 15233 115th Avenue Southwest

Appellant: **June Martin**  
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King County: Department of Development and Environmental Services (DDES)  
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1. On May 18, 2009, the King County Department of Development and Environmental Services (DDES) opened a code enforcement case under the referenced file number regarding the operation of a wood cutting business on the subject property, located at 15233 115th Avenue Southwest on Vashon Island.
2. After conducting certain investigations, on June 4, 2009 DDES formally closed the case without taking any formal enforcement action.
3. By letter received June 16, 2009, Appellant June Martin filed an appeal of DDES's closure of the enforcement case.
4. DDES moved for dismissal of the appeal on *res judicata*<sup>1</sup> grounds. A motion hearing was scheduled and conducted August 4, 2009. Appellant Martin failed to appear at the motion hearing; neither did any person appear on her behalf.<sup>2</sup>
5. At hearing, DDES moved for dismissal based on failure of the Appellant to appear to prosecute her appeal (by responding to the motion for dismissal).<sup>3</sup>
6. DDES's closure of the enforcement case without formal action constitutes a "determination not to issue a citation or order" as such term was articulated in former KCC 23.36.010. Under former KCC 23.36.010, such "determinations not to issue" were subject to the code enforcement administrative appeal process established by Chapter 23.36 KCC.
7. However, by Ordinance No. 16278 effective November 6, 2008, the administrative appeal opportunity for "determinations not to issue" was removed, and the administrative appeal structure for code enforcement actions has since been limited to appeals of formal notices and orders, stop work orders and citations. Administrative appeals of "determinations not to issue" are no longer provided. [KCC 23.36.010]
8. Accordingly, the Hearing Examiner is without subject matter jurisdiction to hear the Martin appeal.
9. As the Hearing Examiner lacks jurisdiction over the appeal, it shall be dismissed.
10. Given dismissal for lack of jurisdiction, Respondent DDES's motions for dismissal based on *res judicata* and for failure to appear need not be decided. Indeed, action on those motions is preempted by the dismissal for lack of jurisdiction. Dismissal for lack of jurisdiction is the only permissible action for the Hearing Examiner to take. [*Shoop v. Kittitas County*, 108 Wn. App. 388, 390, 30 P.3d 529 (2001) citing *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App. 121, 123-24, 989 P.2d 102 (1999); *KSLW v. City of Renton*, 47 Wn. App. 587, 595, 736 P.2d 664 (1986)]

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<sup>1</sup> A code enforcement case with seemingly similar issues on the subject property was reviewed in 2008 under file E0800168, with a DDES determination not to issue sustained on administrative appeal.

<sup>2</sup> Due notice of the motion hearing was given in conformity with applicable law and rule.

<sup>3</sup> Dismissal for default by failure to appear is authorized by Hearing Examiner Rule of Procedure (ROP) XI.F.3.

ORDER:

The instant appeal is dismissed for lack of Hearing Examiner jurisdiction.

ORDERED August 7, 2009.

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Peter T. Donahue  
King County Hearing Examiner

Pursuant to Chapter 20.24 KCC, this dismissal order shall be final and conclusive unless proceedings for review of the order are properly commenced in Superior Court within 21 days of issuance of the Examiner's order. (The Land Use Petition Act, Chapter 36.70C RCW, defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

PTD:vsm  
E0900452 RPT